

Consumer Product Safety Commission

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(b) Any person, agent, or officer who is required to appear in person at an investigational hearing or at a deposition shall testify as to matters and information known and/or reasonably available to the person or firm involved.

(c) Any person, agent or officer who is compelled by subpoena to appear in person at an investigational hearing or at a deposition shall receive the same fees and mileage allowances as are paid witnesses in the courts of the United States.

(d) Any person, agent, or officer who is required to appear at an investigational hearing or at a deposition shall be entitled to retain a copy of any document submitted by him or her and, upon payment of lawfully prescribed costs, in accordance with the Commission's regulations under the Freedom of Information Act, shall be entitled to procure a copy of his or her own testimony as recorded.

(e) The presiding official shall take all necessary action to regulate the course of the hearing, to avoid delay and to assure that reasonable standards of orderly and ethical conduct are maintained. The presiding official, for reasons stated on the record, shall immediately report to the Commission any instance in which a witness or his or her attorney or representative has refused to comply with the presiding official's directions or to adhere to reasonable standards of orderly and ethical conduct in the course of the hearing. The Commission shall take whatever action is appropriate under the circumstances.

§ 1118.8 General or special orders seeking information.

The Commission may require by the issuance of general or special orders any person or firm to submit in writing any reports and answers to questions as the Commission may prescribe. The reports or answers shall be made under oath, and shall be filed within the time prescribed by the Commission. Procedures regarding compliance with general or special orders and motions to limit or quash such orders are provided for in § 1118.9.

§ 1118.9 Motions to limit or quash subpoenas and general or special orders and delegation to modify terms for compliance.

(a) The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solicitor; the Directors of Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the General Counsel the authority:

(1) To negotiate and approve the terms of satisfactory compliance with subpoenas and general or special orders;

(2) To impose conditions upon compliance with such compulsory processes; and

(3) To extend the time for compliance and the time for filing motions to limit or quash.

(b) The person or firm served with a subpoena or general or special order may file a motion to limit or quash the subpoena or order. Any motion to limit or quash shall set forth the reasons why the subpoena or order should be limited or quashed and may be accompanied by memoranda, affidavits, or other documents submitted in support of the motion. The motion must be received in the Office of the Secretary of the Commission within 10 calendar days of receipt of the subpoena or order unless:

(1) The subpoena or order provides for a different time; or

(2) The Commission, for good cause shown, grants an extension of time to file a motion.

(c) Upon receipt of a motion to limit or quash, the Office of the Secretary shall immediately notify and transmit a copy to the appropriate staff member. Unless a different period of time is specified in the subpoena or order, the staff shall file an answer with the Office of the Secretary within 10 calendar days after receipt of the motion. A copy of the answer shall be served upon the moving party or the counsel of the moving party. No reply to the answer will be permitted.

(d) All motions to limit or quash shall be ruled upon by the Commission. The Office of the Secretary shall serve the decision on a motion to limit or quash upon the moving party or the counsel for the moving party and shall

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furnish a copy of the decision to the appropriate staff member. The Commission's decision is a final decision. Motions for reconsideration will not be received.

§ 1118.10 Remedies for failure to permit authorized investigations.

In the event a person or firm fails to comply with any investigative process authorized by these rules, the Commission may seek appropriate action within its authority under the Consumer Product Safety Act (15 U.S.C. 2051, et seq.)

§ 1118.11 Nonexclusive delegation of power.

No provision contained herein delegating any of the Commission's powers shall be construed as limiting the authority of the Commission to exercise the same powers.

Subpart B—Consent Order Agreements

§ 1118.20 Procedures for consent order agreements.

(a) For the procedure to be followed regarding consent order agreements involving section 15 of the Act (15 U.S.C. 2064), refer to the Commission's regulations relating to substantial product hazards (16 CFR part 1115). For all other consent order agreements under the Consumer Product Safety Act, the provisions set forth below are applicable.

(b) The consent order agreement is a document executed by a person, or firm (consenting party) and a Commission staff representative which incorporates both a proposed complaint setting forth the staff's charges and a proposed order by which such charges are resolved. A consent order agreement shall contain the following provisions, as appropriate:

(1) An admission of all jurisdictional facts by the consenting parties;

(2) A waiver of any rights to an administrative or judicial hearing and of any other procedural steps including any rights to seek judicial review or otherwise challenge or contest the validity of the Commission's order;

(3) A statement that the agreement is in settlement of the staff's charges

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and does not constitute an admission by the consenting party that the law has been violated;

(4) A statement describing the alleged hazard, non-compliance or violation.

(5) A statement that the Commission's order is issued under the provisions of the Act (15 U.S.C. 2051, et seq.); and that a violation of such order may subject the consenting party to appropriate legal action.

(6) An acknowledgment that the consent order agreement only becomes effective upon its final acceptance by the Commission and its service upon the consenting party;

(7) An acknowledgment that the Commission may disclose terms of the consent order agreement to the public;

(8) A statement that the consenting party shall comply with the provisions of the agreement and order;

(9) A statement that the requirements of the order are in addition to and not to the exclusion of other remedies under the Act.

(c) At any time in the course of an investigation, the staff, with the approval of the Commission, may propose to the person or firm being investigated that any alleged violation be resolved by an agreement containing a consent order. Additionally, such a proposal may be made to the Commission staff by such person or firm.

(d) Upon receiving an executed agreement, the Commission may:

(1) Provisionally accept it;

(2) Reject it and issue the complaint (in which case the matter will be scheduled for hearing in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR part 1025, June 21, 1977 or as amended) and/or

(3) Take such other action as it may deem appropriate.

(e) If the agreement is provisionally accepted, the Commission shall place the agreement on the public record and shall announce provisional acceptance of the agreement in the FEDERAL REGISTER. Any interested person may ask the Commission not to accept the agreement by filing a written request in the Office of the Secretary. Any request must be received in the Office of the Secretary no later than the close of